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UNITED STATES DISTRICT COURT  
 EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

V.

GUILLERMO CARDENAS,

Defendant.

NO: CR-02-6057-FVS

UNITED STATES  
 MEMORANDUM  
 ON AMELINE REMAND

COMES NOW the Plaintiff, United States of America, by and through its attorney, James A. McDevitt, United States Attorney for the Eastern District of Washington, and Robert A. Ellis, Assistant United States Attorney, and submits the following memorandum regarding the Ameline remand of this action.

Mr. Cardenas entered a plea of guilty to a written plea agreement. That plea agreement included a stipulation as to the amount of narcotics to be used in calculating the offense level. The sentence imposed by the court was based upon that calculation.

The plea agreement indicated at the attached worksheet that Mr. Cardenas was believed to be in Criminal History Category I. The presentence investigation report revealed a 2000 conviction in Benton County which, based upon a sentence

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1 of 60 days, resulted in a total raw score of 4 and a Criminal History Category of  
2 III. The resulting guideline range was 87 to 108 months.

3 In accordance with the plea agreement the government recommended the  
4 low end of the applicable guideline range. The defendant reserved the right to file  
5 a motion for a downward departure but did not do so. The court imposed a  
6 sentence of 87 months.

7 The issue before the court is whether it would have imposed some other  
8 sentence had it been aware the sentencing guidelines were advisory and not  
9 mandatory. The record before the court at sentencing was the presentence  
10 investigation report and the remarks of counsel at the sentencing hearing. Mr.  
11 Cardenas had been convicted of a narcotics trafficking offense less than two years  
12 prior to his involvement in the trafficking activities resulting in these charges. His  
13 prior conviction involved several ounces of cocaine and approximately \$34,000.  
14 This indicates a multiple kilo level transaction. Yet two years later, he is engaging  
15 in similar conduct.

16 At the sentencing hearing, it was indicated Mr. Cardenas had a daughter  
17 with medical problems. It is never persuasive to the government when a defendant  
18 asks the court to consider the medical problems of a child or spouse when the  
19 defendant himself did not view that medical problem as sufficient motivation to  
20 change his course of conduct. The government sees nothing in this record which  
21 would indicate a sentence other than one within the guideline range would be  
22 appropriate.

23 DATED: November 8, 2005

24 JAMES A. McDEVITT  
United States Attorney

25 s/Robert A. Ellis  
26 ROBERT A. ELLIS  
27 Assistant U.S. Attorney

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1 I hereby certify that on November 8, 2005, I electronically filed the  
2 foregoing with the Clerk of the Court using the CM/ECF System which will send  
3 notification of such filing to the following: Edwin Alden, attorney for Defendant.  
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5  
6 s/Robert A. Ellis  
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